Office - Supreme Court, U.S.
FILED
JAN 23 1984
ALEXANDER L. STEVAS,
CLERK

83 - 1267

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

MELVIN POWERS, DON NORWOOD,
CANDACE WOODLEY and DEBRA BAILES,

Petitioners,

v.

THE CITY OF HUNTSVILLE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

GEORGE E. BARRETT
CHARLES R. RAY
MICHAEL J. PASSINO

BARRETT & RAY, P.C.
217 - 2nd Avenue, North
Nashville, Tennessee 37201
(615) 244-2202

Attorneys for Petitioners.

Washington, D.C. • THIEL PRESS • (202) 638-4521

QUESTIONS PRESENTED FOR REVIEW

1. Whether Alabama state courts are preempted by the National Labor Relations Act from adjudicating whether peaceful organizing activity constitutes criminal conduct.

2. Whether Section 13A-7-4, Code of Alabama, (Criminal Trespass) is overly broad and vague and violates the First and Fourteenth Amendments to the United States Constitution.

3. Whether convictions of criminal trespass violate the due process clause of the Fourteenth Amendment to the Constitution because there is no evidence to support the conclusion that Petitioners acted "knowingly" or that they were on the premises "unlawfully."

4. Whether the convictions violate the due process clause of the Fourteenth Amendment to the United States Constitution because the Alabama court implicitly found that Petitioners had the burden to show that they were on the premises lawfully.

5. Whether the prosecution of Petitioners under Section 13A-7-4, Code of Alabama, is selective prosecution in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

6. Whether Petitioners' conduct is protected under Section 7 of the National Labor Relations Act and therefore the requisite proof of guilty knowledge was lacking.

PARTIES TO THE PROCEEDING

All parties to the proceeding in the Supreme Court of Alabama are listed in the caption of this case.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2

STATEMENT OF THE CASE 3

A. Brief Statement of Facts and the Proceeding Below 3

B. The Federal Questions Were Raised in the Proceedings Below 5

REASONS FOR GRANTING THE WRIT:

A. Alabama State Courts Are Preempted Under The National Labor Relations Act From Adjudicating Whether Or Not Peaceful Organizing Activity Constitutes Criminal Conduct 6

B. Section 13A-7-4 Of The Alabama Criminal Code Is Overly Broad And Vague And Violates The First And Fourteenth Amendments To The United States Constitution 8

C. The Convictions In This Case Violate The Due Process Clause Of The Fourteenth Amendment Because There Is No Evidence To Support The Conclusion That Petitioners Acted "Knowingly" Or That They Were On The Premise "Unlawfully" 11

D. The Convictions Under Section 13A-7-4 Violate Due Process To The Extent That the Court of Criminal Appeals Implicitly Found That Petitioners Had The Burden To Show That They Were On The Premises Lawfully 12

F. Petitioners' Conduct Is Protected Under Section 7 Of The National Labor Relations Act And, Therefore, The Requisite Proof of "Guilty Knowledge" Was Lacking 14

CONCLUSION 15

TABLE OF AUTHORITIES

Cases:

Burks v. United States, 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed. 21 1 (1978) 12, 15

Coates v. Cincinnati, 402 U.S. 611, 99 S.Ct. 1696, 29 L.Ed. 2d 214 (1971) 9

Connally v. Generally Construction Co., 296 U.S. 385, 70 L.Ed. 322 (1926) 9

Florida Gulf Coast Building Trades Council v. Debartolo, 392 So. 2d 916 (Fla. App. 1980) 8

Garner v. Teamsters, 346 U.S. 485, 74 S.Ct. 161, 98 L.Ed. 2d 299 (1953) 6

Giant Food Markets, Inc. v. NLRB, 633 F.2d 18 (6th Cir. 1980) 7

Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed. 2d 222 (1972) 10

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979) 12, 15

Lanzetta v. New Jersey, 306 U.S. 451, 59 S.Ct. 647, 83 L.Ed. 889 (1930) 9

Montgomery Ward & Co. v. NLRB, 111 LRRM 3021 (7th Cir. 1981) 12

Mullaney v. Wilber, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed. 2d 508 (1975) 12

NLRB v. Babcock & Wilcox Co., 351 U.S. 105, 75 S.Ct. 679, 100 L.Ed. 975 (1956) 7

Papachristou v. Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d (1972) 9

John Price Associates v. Utah State Conf. of Bricklayers, 615 P.2d 1210 (Utah 1980) 8

San Diego Bldg. Trades v. Garmon, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959) (Frankfurter, J.) 7

Sears, Roebuck & Co. v. Carpenters, 436 U.S. 180, 98 S.Ct. 1745, 56 L.Ed.2d 209 (1978) 7

Seattle First National Bank v. NLRB, 638 F.2d 1221 (9th Cir. 1981) 7

Seattle v. Rice 612 P.2d 792, 793 (Wash. 1980) 9, 10

State ex rel. Retail Store Employees v. Black, 603 S.W. 2d 276 (Mo. App. 1980) 8

Reece Shirley & Ron's Inc. v. Retail Store Employees, 101 LRMM 2844 (S.Ct. Kan. 1979) 8

Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940) 8

Wiggins v. Local 1557, Retail Clerks, 595 S.W. 2d 802 (Tenn. 1980) 7

In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed. 2d 508 (1975) 12

Yick Wo v. Hopkins, 118 U.S. 220, 6 S.Ct. 1064, 30 L.Ed. 200 (1888) 13

OTHER AUTHORITIES

Code of Alabama 13A-7-4 (1975) 3

28U.S.C. § 1257(3) 0

APPENDICES

APPENDIX A – Excerpts of Transcript in Municipal Court, City of Huntsville (Dec. 28, 1981) 1a

APPENDIX B – Excerpts of Record in Circuit Court, Madison County, Alabama (July 7, 1982) 13a

APPENDIX C – Opinion of Alaabma Court of Criminal Appeals (Aug. 2, 1983) 43a

APPENDIX D – Order of Alabama Court of Criminal Appeals Denying Rehearing (Oct. 4, 1983) 50a

APPENDIX E – Petition for Writ of Certiorari Filed in Alabama Supreme Court (Oct. 14, 1983) 51a

APPENDIX F – Order of Alabama Supreme Court Denying Petition (Nov. 23, 1983 . . . . . 55a

APPENDIX G – Excerpts of Alabama Criminal Code. 57a

APPENDIX H – Letter Indicating Stay of State Court Judgment (Dec. 6, 1983) 59a

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

MELVIN POWERS, DON NORWOOD,
CANDACE WOODLEY and DEBRA BAILES,

Petitioners,

v.

THE CITY OF HUNTSVILLE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

OPINIONS BELOW

The order of the Alabama Supreme Court denying Petitioners' Petition for Writ of Certiorari, without opinion is unpublished and appears in the Appendix (Appendix F, page 55a). The opinion of the Court of Criminal Appeals of Alabama affirming Petitioners' convictions is unpublished and appears in the Appendix (Appendix C, pages 43a-49a).

JURISDICTION

The judgment of the Supreme Court of Alabama denying Petitioners' Petition for Writ of Certiorari to the Alabama Court of Criminal Appeals was entered November 23, 1983. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The first amendment to the U.S. Constitution provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble.

The fourteenth amendment to the U.S. Constitution provides in pertinent part:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 7 of the National Labor Relations Act, 29 U.S.C. §157 provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

Section 13A-7-4 of the Alabama Criminal Code provides:

> (a) A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in or upon premises.

Section 13A-7-1(4) of the Alabama Criminal Code provides in pertinent part:

> A person "enters or remains unlawfully" in or upon premises when he is not licensed, invited or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such persons or other authorized person.

STATEMENT OF THE CASE

A. Brief Statement of Facts and the Proceedings Below

On November 24, 1981, Candace Woodley, Debra Bailes, Melvin Powers and Don Norwood entered Albertson's Food Market in Huntsville, Alabama. Powers and Norwood were union organizers. Woodley and Bailes were former employees of Albertson's who had been fired for their union activity. On November 24, both women wore union jackets in the store. The store manager recognized the women and saw an NLRB document on the table where the four petitioners sat peacefully drinking coffee. The store manager ordered the four to leave the premises. When they refused, he called the

police who arrested Powers. Twice later in the day,petitioners returned to Albertson's, a public establishment, where they made purchases and conducted themselves peacefully. On each occasion they were ordered to leave by the management and arrested by the Huntsville police when they refused to leave. On each occasion, petitioners identified themselves as union organizers and attempted to explain that they were engaged in protected organizing activity.

The charges against petitioners were initially tried in the Municipal Court of Huntsville, Alabama before the Honorable W.H. Griffin, Judge, wherein all four defendants were found guilty on all charges of criminal trespass in the third degree. A Twenty-five ($25.00) Dollar fine plus costs was imposed.

Defendants prayed an appeal to the Circuit Court for Madison County, Alabama, wherein defendant Powers was found guilty and was fined in one case, Twenty-five ($25.00) Dollars plus costs, Fifty ($50.00) Dollars plus costs in another and One Hundred ($100.00) Dollars plus costs in the third. Defendant Norwood was found guilty and fined Twenty-five ($25.00) Dollars plus costs in one case and Fifty ($50.00) Dollars plus costs in the other. Woodley was found guilty and fined Twenty-five ($25.00) plus costs. Bailes was found guilty and fined Twenty-five ($25.00) Dollars plus costs.

All four defendants prayed an appeal to the Court of Criminal Appeals of Alabama, which affirmed the convictions in an opinion rendered on August 2, 1983. A petition to rehear was denied on October 4, 1983. Their Petition for a Writ of Certiorari was denied by the Alabama Supreme Court, without opinion on November 23, 1983. Related cases are pending before the National

Labor Relations Board, *In the matter of Albertsons, Inc.-Southco Division*, No. 10-CA-17793, and before the United States District Court.

B. The Federal Questions Were Raised in the Proceedings Below

Petitioners' contentions that prosecution for criminal treapass is pre-empted by the National Labor Relations Act and in violation of their first amendment rights first were raised in a motion to dismiss made in the Municipal Court for the City of Huntsville (Appendix A, pp. 4a-11a). The motion was denied.

Petitioners' contentions that the Alabama trespass statute is overbroad and vague, that there was no proof of criminal intent, that criminal prosecution is pre-empted by federal legislation and that they were victims of selective prosecution in violation of the fourteenth amendment to the Constitution were raised by written motions made in the Circuit Court for Madison County, Alabama, all of which were denied (Appendix B, Clerk's Record pages 20a, 22a).

Petitioners' pre-emption and due process contentions, including the burden-shifting argument were presented to the Alabama Court of Criminal Appeals (App. pp. 51a-54a) and the Alabama Supreme Court (Appendix E, Petition for Writ of Certiorari pp. 1-12) and were rejected by both courts. Thus, all federal questions have been raised timely and properly below.

REASONS FOR GRANTING THE WRIT

A. ALABAMA STATE COURTS ARE PREEMPTED UNDER THE NATIONAL LABOR RELATIONS ACT FROM ADJUDICATING WHETHER OR NOT PEACEFUL ORGANIZING ACTIVITY CONSTITUTES CRIMINAL CONDUCT.

As the Alabama Court of Criminal Appeals noted at the outset of its opinion of August 2, 1983, "[i]t is manifestly apparent that all parties knew the people were present in the delicatessen section of the Albertson's store in connection with efforts to organize the employees." (Appendix C, pages 44a). This finding, coupled with the fact that it is clear that petitioners' organizing activities were absolutely peaceful, support the ineluctable conclusion that the activities of petitioners were arguably protected by Section 7 of the National Labor Relations Act, as amended 29 U.S.C. §157; and, as such, that the Alabama courts are preempted from determining the extent to which petitioners' conduct was unlawful under Section 13A-7-4 of the Alabama Criminal Code.

The rationale of preemption extends beyond a mere conflict[1] between federal and state substantive rules, to include a respect for the administrative expertise necessary to investigate, hear and decide the application of such rules to specific facts in light of federal labor policy. *Garner v. Teamsters,* 346 U.S. 485, 490, 74 S.Ct. 161, 98 L.Ed.2d 228 (1953).

---

[1] It should be noted that there is not necessarily a clear conflict between Section 13A-7-4 and the lawful exercise of Section 7 rights by petitioners in the present case. Specifically, this Court could find that Section 13A-7-4 requires a showing that petitioners were on the premises unlawfully, that "unlawfully" does not include peaceful exercise of Section 7 rights and that the prosecution failed to introduce any evidence on this issue.

Given the foregoing, while preemption is indeed a "difficult area," general principles dispositive of this case can be identified. First, preemption of state law is the rule rather than the exception in labor relations. *San Diego Bldg. Trades v. Garmon*, 359 U.S. 236, 241, 79 S.Ct. 773, 3 L.Ed. 2d 775 (1959) (Frankfurter, J.).

Second, while state regulation is permissible either if the matters regulated are peripheral to the concerns of the Act or if the matters regulated touch deeply-rooted local concerns, these exceptions are narrow, and are not invoked by the type of peaceful activity involved in the present case.

In *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180, 207, 98 S.Ct. 1745, 56 L.Ed. 2d 209 (1978), this Court applied the two principles previously described to arrive at a rule to the effect that peaceful union organizing activity is *never* subject to state-court jurisdiction *if the union has filed an unfair labor practice charge.*

Applying *Sears* to the present case, it is evident that, in the context of peaceful organizational activity, the enforcement of Section 13A-7-4 is preempted.[2] To con-

---

[2] Whether petitioners were entitled to access to the delicatessen area involves a much more elaborate test than that enunciated in NLRB v. Babcock & Wilcox Co., 351 U.S. 105, 75 S.Ct. 679, 100 L.Ed. 975 (1956), upon which the Court of Criminal Appeals mistakenly relied. *See, e.g.*, Seattle First National Bank v. NLRB, 638 F.2d 1221 (9th Cir. 1981); Giant Food Markets, Inc. v. NLRB, 633 F.2d 18 (6th Cir. 1980).

The fact that the Alabama Court of Criminal Appeals in an opinion allowed to stand by the Alabama Supreme Court applied the wrong legal analysis further supports this Court conforming the rule in Alabama with that of a significant number of states that have held that state tribunals were preempted in similar situations. See Wiggins v. Local 1557, Retail Clerks, 595 S.W.2d 802 (Tenn.

[footnote continued]

clude otherwise would constitute sanctioning the use of Alabama state law as an "instrument of coercion or retaliation."[3] The decision of the Alabama Supreme Court is thus in conflict with prior decisions of this Court and the petition for writ of certiorari should be granted.

B. SECTION 13A-7-4 OF THE ALABAMA CRIMINAL CODE IS OVERLY BROAD AND VAGUE AND VIOLATES THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

It is established beyond preadventure that activity protected by the first amendment may not be interfered with under the guise of promoting the police power. See *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940).

In the instant case, petitioners were peaceably assembled in a public area of the store in the exercise of their rights under Section 7 of the National Labor Relations Act and the United States and Alabama constitutions. Their arrests, like the prior discharges of the two female defendants, were aimed at thwarting these rights as well as the rights under Section 7 of all other employees of the store able to observe Albertson's lawlessness.

The arrests, charges, and ultimate convictions were predicated on Alabama Criminal Code, §13A-7-4, which provides:

1980); State ex rel. Retail Store Employees v. Black, 603 S.W.2d 676 (Mo. App. 1980); Florida Gulf Coast Building Trades Council v. Debartolo, 392 So. 2d 916 (Fla. App. 1980); John Price Associates v. Utah State Conference of Bricklayers, 615 P.2d 1210 (Utah 1980); Reece Shirley & Ron's Inc. v. Retail Store Employees, 101 LRRM 2844 (S.Ct. Kan. 1979).

[3] Bill Johnson's Restaurants, Inc. v. NLRB, _____ U.S. _____, 51 USLW 4636, 4638 (S.Ct., May 31, 1983).

Criminal trespass in the third degree.

(a) A person is guilty of criminal trespass in the third degree when he *knowingly* enters or *remains unlawfully* in or upon premises.

(b) Criminal trespass in the third degree is a violation. (Acts 1977, no. 607 §2607).

(Emphasis added).

Petitioners submit that Section 13A-7-4 is palpably unconstitutional as applied to the present case in that it is so overly broad and vague that persons of common intelligence must guess at its meaning and differ as to its application.

In *Connally v. Generally Construction Co.*, 269 U.S. 385, 391, 70 L.Ed. 322 (1926), this Court clearly enunciated the requirement that criminal statutes must be specific. See also, *Coates v. Cincinnati*, 402 U.S. 611, 99 S.Ct. 1696, 29 L.Ed. 2d 214 (1971).

The due process test that criminal statutes must satisfy is two-pronged. First, the statute must give fair notice of what conduct is prescribed. *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S.Ct. 647, 83 L.Ed. 889 (1930). Second, the statute must be sufficiently specific that it avoids arbitrary enforcement. *Papachristou v. Jacksonville*, 405 U.S. 156, 168-171, 92 S.Ct. 839, 31 L.Ed. 2d (1972). Section 13A-7-4 meets neither test.

A number of courts have struck down criminal trespass statutes that contain more specific language than this Alabama statute. In *Seattle v. Rice*, 612 P.2d 792, 793 (Wash. 1980), a city ordinance was held to be overly vague even though it provided in part, that:

> A person, who regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege

> unless he defies lawful order not to enter or remain, personally communicated to him by the owner of the premises or some other authorized person.

The court held that the phrase "lawful order" did not satisfy either of the due process standards as to clarity and, therefore, that the ordinance was void for vagueness. The *Rice* court reasoned that the ordinance was not sufficiently clear to prevent a person of common intelligence from having to guess as to who an authorized person was, what type of order was lawful and how long that order could be in effect.

Section 13A-7-4 is subject to the same criticism as those leveled at the ordinance in *Rice*. More importantly, the facts in the present case raise a much more serious vagueness issue: namely, whether the phrase "knowingly enters" or the phrase "remains unlawfully" can in any meaningful sense be determined to have been intended to apply to activity protected by Section 7 of the National Labor Relations Act, as amended, 29 U.S.C. §157.

The ambiguity in Section 13A-7-4 is particularly pernicious when coupled with the petitioners' attempts to exercise their federally protected rights. Specifically, in such circumstances, Albertson's can consciously utilize vague state criminal statutes to chill, if not cut off, the exercise of such rights. Moreover, based on the ambiguity of the statute Albertson's was able to enlist the assistance of the City of Huntsville, unwittingly or otherwise, in effectuating its attempts at squelching organizing attempts at its store. Thus, without meaningful statutory guidance, the City of Huntsville, and ultimately the courts of the state of Alabama promote unequal enforcement of criminal statutes.[4]

---

[4] See Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed. 2d 222 (1972).

[footnote continued]

C. THE CONVICTIONS IN THIS CASE VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE THERE IS NO EVIDENCE TO SUPPORT THE CONCLUSION THAT PETITIONERS ACTED "KNOWINGLY" OR THAT THEY WERE ON THE PREMISE "UNLAWFULLY."

As the Alabama Court of Criminal Appeals noted in its opinion of August 2, 1983, "[i]t is manifestly apparent that all parties knew these people were present in the delicatessen section of Albertsons store in connection with efforts to organize the employees." (Appendix C, page 44a). Such a purpose is clearly lawful. There is absolutely no evidence that the petitioners' presence at the store was not protected by the National Labor Relations Act so as to render their actions "unlawful" within the meaning of Section 13A-7-4. Moreover, there is no evidence to show that petitioners knew they were acting unlawfully or that they believed other than that their actions were protected by federal law.

This Court simply cannot blink at the fact that this case arises out of prior discharges of union adherents attempting to organize the store. As one commentator has recently observed, the persistent decline in union membership and the increasing failure of organizing drives is directly attributable to the stubborn, coercive and unlawful resistance of employers to the representation process. Weiler, *Promises to Keep: Securing Worker's Right to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1796 (1983) (hereinafter "Weiler").

Specifically, employers like Albertson's violate the labor law with impunity, using a panoply of tools including discharge not only to punish union activists, but to warn the undecided.

> Even more importantly, the dismissal of key union adherents gives a chilling edge to the warning that union representation is likely to be more trouble for the employees than it is worth. *Id.*, at 1778.

In the present case, Albertson's has attempted to add Alabama criminal law to its arsenal.

In the absence of such evidence, the convictions are constitutionally defective and contrary to prior decisions of this Court. See *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979); *Burks v. United States*, 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed. 2d 1 (1978).

D. THE CONVICTIONS UNDER SECTION 13A-7-4 VIOLATE DUE PROCESS TO THE EXTENT THAT THE COURT OF CRIMINAL APPEALS IMPLICITLY FOUND THAT PETITIONERS HAD THE BURDEN TO SHOW THAT THEY WERE ON THE PREMISES LAWFULLY.

In its August 2, 1983 opinion, the Alabama Court of Criminal Appeals observed that petitioners introduced no evidence to establish their innocence (Appendix C, p. 47a, Opinion page 5) concluding that petitioners were subject to state law. This failure to introduce evidence also appears to have been the basis for the petitioners' convictions, the court below apparently finding that petitioners' actions could have been lawful only if they had shown "that the employees could only be reached while on the employer's premises."[5] However, the Constitution does not require that defendants prove their innocence. See *Mullaney v. Wilbur*, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed. 2d 508 (1975); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970).

Specifically, both the Constitution and Section 13A-7-4 place the burden on the prosecution to establish that petitioners remained on the premise "unlawfully." There

---

[5] *Id.* at 5. This test used by the Alabama Court does not fully describe defendants' Section 7 rights. *See, e.g.*, Montgomery Ward & Co. v. NLRB, 111 LRRM 3021 (7th Cir. 1981); Baptist Memorial Hospital, 229 NLRB No. 1, 95 LRRM 1043 (1977); Marshall Field & Co., 98 NLRB 88, 93-94, 29 LRRM 1305, *modified and enforced*, 200 F.2d 375, 31 LRRM 2073 (7th Cir. 1952). *See also*, note 2, *supra*.

is simply no evidence to establish that the company's request was lawful under the National Labor Relations Act, or that petitioners' refusals were not protected. The burden to establish such matters lies with the prosecution, not defendants.

E. THE PROSECUTION OF PETITIONERS UNDER SECTION 13A-7-4 IS SELECTIVE PROSECUTION IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

The Alabama statute allows for selective prosecution in violation of the equal protection guarantee of the fourteenth amendment to the Constitution. See *Yick Wo v. Hopkins,* 118 U.S. 220, 6 S.Ct. 1064, 30 L.Ed. 200 (1886). There is no doubt that the petitioners were prosecuted because they were labor organizers, not because of their peaceful conduct. No official from the City of Huntsville sought to vindicate the rights of the petitioners to be on the premises, but instead, all emphasis was placed upon ridding Albertson's of labor agitators. Thus, we have the "unequal hand," denounced in *Yick Wo,* and facilitated by an ambiguous Alabama statute that allows any result the authority interpreting it wishes.

The real selectiveness of prosecution, however, was evident when the arresting officers would not allow Norwood or Powers to identify themselves or explain their purpose fully, even after the officers knew that they were union organizers.

Throughout the three occurrences the city and its officers knew full well that protected concerted union

activity was involved, and that the officers' actions were calculated to assist Albertson's in unlawfully removing, from a public place, labor union organizers. The action of the city, in concert with Albertson's (even after knowledge of the NLRB complaint) in continuing its charade of evenhanded prosecution was discriminatory when in fact the entire prosecutorial focus was directed to removing labor union organizers on behalf of a private employer.

F. PETITIONERS' CONDUCT IS PROTECTED UNDER SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT AND, THEREFORE, THE REQUISITE PROOF OF "GUILTY KNOWLEDGE" WAS LACKING.

In the case below Officers Harvey and Cruse, as well as the management of Albertson's, testified at length about the good-faith attempts of Powers and Norwood to explain to the Huntsville police why they had a federally protected right to be in the store. In fact, the Court of Criminal Appeals specifically found that it was apparent to both Albertson's management and police that petitioners were present at the store because they were organizing.

Under such circumstances, the evidence clearly fails to establish the requisite criminal intent.

A conviction for violating Section 13A-7-4 of the Alabama Criminal Code requires that the prosecution establish criminal intent, as evidenced by the comment to the effect that:

> A person who trespasses upon premises accidentally, *or who honestly believes that he is licensed or privileged to enter is not guilty of any offense, irrespective of possible liability on the civil side.*

(Emphasis added).

In summary, there is no evidence in the record to show that defendants manifested the requisite mental state to support a conviction, e.g., *Sherman v. State*, 626 S.W. 2d 520 (Ct. Crim. App. Tx. 1981); and as such, the convictions are inconsistent with the holdings of this Court in *Jackson v. Virginia, supra* and *Burks v. United States, supra* and the petition should be granted.

CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari to the Supreme Court of Alabama should be granted.

Respectfully submitted,

GEORGE E. BARRETT
CHARLES R. RAY
MICHAEL J. PASSINO

BARRETT & RAY, P.C.
217 - 2nd Avenue, North
Nashville, Tennessee 37201
(615) 244-2202

Attorneys for Petitioners.

Of Counsel:

GEORGE MURPHY
UFCW
1775 K Street, N.W.
Washington, D.C. 20005

APPENDIX A

IN THE MUNICIPAL COURT

CITY OF HUNTSVILLE

STATE OF ALABAMA

CITY OF HUNTSVILLE,	Case Nos.
	122168-H
vs.	122169-H
	122158-H
CANDICE WOODLEY, DEBORAH BAILS,	122159-H
DONALD NORWOOD AND	122147-H
MELVIN POWERS,	122154-H
	122157-H

Defendants

REPORTER'S OFFICIAL TRANSCRIPT ON APPEAL

Before:

Hon. W.H. Griffin, Judge
Huntsville, Alabama
Monday, December 28, 1982, 1:35 p.m.

Appearances:

For the City:

Roy Miller, Esq.
City of Huntsville Attorney

For the Defendants:

Barrett & Ray
9th Floor

Third National Bank Building
Nashville, Tennessee 37219

[3] PROCEEDINGS

1:35 p.m.

Mr. Barret: May it please the Court, I am George Barrett. I am a member of the Nashville Bar in Nashville, Tennessee. And I have with me my associate, Mr. Charles Ray. We brought our law clerk, Rudy Williams, who didn't have to go to school today at Vanderbilt, so he came with us.

We had a hearing this morning in Federal Court on an application on behalf of the Retail Clerks and these defendants in this case, plaintiffs in the 1983 case we have filed in the United States District Court alleging violation of federally protected rights by the City of Huntsville and Albertson's Supermarket, causing these persons to be arrested, in order to chill the exercise of their rights under the National Labor Relations Act and under the First Amendment and the Fourteenth Amendment to the Constitution of the United States in Article 1, section 4 of the Alabama State Constitution.

We also sought at that time to remove these cases to the United States District Court on [4] that same ground. The Judge summarily dismissed our petition for removal, which remands the cases back to this Court. And on the application for a temporary restraining order restraining the defendant, Albertson, and the City from going forward or prosecuting these cases in this court, the Judge took that matter under advisement.

And when we got back from lunch with Mr. Battle,

who is our local counsel, we had a call from the Judge's clerk. We called, and the clerk said that the Judge was inclined to deny the application for a temporary restraining order and wanted to know when we wanted a hearing on our application for a preliminary injunction.

Since that time, I have not had an opportunity to speak to counsel to determine whether there can be any other disposition of these cases or the status. And I think it may save the Court some time if, as counsel for the City indicated, we may spend a little time talking.

The Court: Let's take that opportunity right now, Mr. Barrett.

Mr. Miller: Judge, let me introduce [5] Richard Appel from Washington, the attorney representing Albertson's.

The Court: Gentlemen, do you want a recess here?

Mr. Miller: About 5 minutes, Judge.

(Brief recess.)

Mr. Miller: Your Honor, there is that great possibility that we could work it out by stipulation. But as in all cases, by the time we got around to agreeing on the stipulation, we could have tried it. So I think both sides have agreed to try these cases more or less chronological as to the events that occurred on that date.

The Court: Gentlemen, let me get my own records in some type of chronological order here and see what we can do.

Judging entirely by the documents, the initial arrest made was a Mr. Melvin Powers at 12:07 p.m.; is everyone in agreement on that?

Mr. Ray: Yes, Your Honor.

The Court: Are you all joining any of these cases?

Mr. Miller: Yes, sir. I'd like to move, [6] if it please the Court, to consolidate all cases and try them as one charge, more or less.

The Court: There is some interval of time involved here between 12:07 p.m. and 7:09 p.m. Gentlemen?

Mr. Ray: If it please the Court, I think the sequence of events, as we understand them, Mr. Powers was first arrested at 12:07. And four individuals were arrested sometime around 3:30 in the afternoon. And a third arrest was made at 7-something, as Your Honor has indicated.

We don't have any problems with the City attorney being able to put on all his proof in terms of all these cases. But we think perhaps they should remain on the same warrants they are on. In other words, we don't want to see them all consolidated into one particular one.

The Court: Those that we have that were not original arrests by the officers but were made on warrant and affidavit, they will be considered on their own merits. All right, gentlemen, if we can join them all, I'm ready.

Mr. Miller: Judge, are they joined as [7] such on a chronological set of events?

The Court: That would be the logical way to go about the cases.

Mr. Miller: All right. We call Sergeant Jackie Cruse to the stand, please.

Mr. Barrett: May it please the Court, prior to hearing these cases, we would like to move that these cases be dismissed, and I would like to be heard on that, Your Honor.

The Court: Go ahead.

Mr. Barrett: We filed—and I don't know whether the Court has seen the pleadings or not, but we alluded to it earlier. We filed on Thursday in the United States District Court for the Northern District of Alabama a removal petition for these seven cases. And simultaneously therewith, we filed an original action in the style in the same Court, the style Retail Clerks International Association Local 1557; Melvin Powers; Don Norwood; Deborah Bails; and Candice Woodley, plaintiffs, versus Albertson's

Food and Drug, Inc., and its agent George Malmberg; the City of Huntsville; and Officers Brocato, Carroll; Sergeant Cruse; Officer Harvey and Officer Wright, all [8] in their official capacity. At the time that the verified complaint was filed, we made application for a temporary restraining order restraining the Defendants from proceeding in this court on the basis that the record shows and the facts are, the undisputed facts, that these defendants were arrested seriatum, Powers first in Albertson's deli or delicatessen inside the supermarket. Then Mr. Powers, Mr. Norwood, Ms. Bails and Ms. Woodley were arrested in the delicatessen. And we alleged in the verified complaint that the purpose of the arrests was not to enforce the criminal statute of the State of Alabama or the ordinances of the City of Huntsville. But the purpose of the arrests was to chill or to prevent the exercise of the First Amendment Constitutional rights and the Alabama Constitutional rights as provided in Article I, section 4, which is freedom of speech, and the associational rights of this labor organization pursuant to section 7 of the National Labor Relations Act; and that the subject matter of this litigation is pre-empted by the National Labor [9] Relations Act, the valid act of congress pursuant to Article 6 of the Constitution of the United States; and that this Court is without subject matter of jurisdiction; and that therefore, the Plaintiffs in the Federal Court were entitled to restrain the Defendant from proceeding in this court.

The Court denied the petition for a temporary restraining order and has asked for dates when there can be a hearing on a preliminary injunction, as to whether or not we are entitled to one or whether or not the matter will be mooted by the trial in the matter of this Court today.

At the argument in chambers before Judge Holcomb this morning, it was the City's position that they are legit-

imate defenses which properly belong in this court; that is, that we raise the question of subject matter jurisdiction. And if the Court determines that it does not have subject matter jurisdiction, obviously it is not going forward. It was vigorously argued by the City this morning about the company in the Albertson case. Their counsel from Washington who is competent in the field of labor law, that that is a legitimate defense, and that the [10] place to raise it was not in Federal Court under the 42 U.S. 1983, but rather the place to raise it was in this court. And that's exactly what we are doing at this time. We are saying that the matter should be dismissed on the basis that you do not have subject matter jurisdiction; that the conduct complained of belongs exclusively to the forum created by Congress under Article 6, that is, the National Labor Relations Board.

And I represent to you, and we exhibited to the Federal Court and the City has notice of, under fair labor practice charges that we, the Union, have filed against the Company complaining of the conduct which is the source of these warrants; that is, the Company ordered these people off the premises, off the public part of their premises, at the delicatessen and fired them. But that's not germane to this. And such conduct constitutes an unfair labor practice, and that Congress created a forum in which it gave the expertise to adjudicate these matters; that is, the National Labor Relations Board. It doesn't belong to the Federal Court. It doesn't belong to the State Court. No disrespect to [11] Your Honor, no disrespect to the State Court.

But in our scheme of Constitutional Law, Congress has that authority, and they have exercised it. And the Supreme Court has consistently upheld that authority, that the State Courts are pre-empted from acting in these areas.

Now, we are not complaining and would have no right to complain about those matters that are "so deeply rooted in local interest that Congress ought not to pre-empt them, and normal police powers of the State, the rights to tort and that sort of thing, the numerous defamations of character in labor disputes." But where the conduct as complained of here is so inequitably in order with conduct protected by the National Labor Relations Act, section 7 are prohibited by section 8, then that this Court is without jurisdiction. And that's exactly what the Company argued this morning in the Albertson's case before Judge Haltom, that he didn't have jurisdiction, and we should raise these questions in this court. And we should have no fear, which we do not, I might say, in fact, that this Court would recognize these arguments as valid defenses.

[12] I might say that this similar adjunctive relief was tried by me in the State Supreme Court, tried in the State Court in Tennessee before the Sears case came out, which was a leading case stating that the National Labor Relations Board. And by the time I got to the Supreme Court, the United States Supreme Court, and the State Supreme Court, the United States Supreme Court decided that the Sears case was law. And the Tennessee Supreme Court agreed that State Courts are pre-empted of subject matter jurisdiction, and cases like this where the conduct complained of is conduct that is cognizable before the National Relations Board.

And we have a charge pending before that board. As a matter of fact, the board agent has come up here and even spoken to representatives of the City in regards to the allegations of this arrest and representatives of the Company, and have taken the statements of the Defendants in this case who are the complaining parties in the National Labor Relations Board.

Now, as I say, we don't claim an exemption from an application of local criminal aquaisi criminal [13] statutes. But in this instance, the facts are that the first time Mr. Powers was arrested, he was arrested on complaint of City officers and posted a $35 cash bond. The second time Mr. Powers was arrested along with Mr. Norwood, Ms. Bails, and Ms. Woodley, the bond all of a sudden had jumped to $500. That was on the complaint of City police officers. All during the course of that day, which was November 24th, I was in telephone communication with Mr. Younger, the City Attorney. And I said, "Mr. Younger, don't let Albertson's use the City as their pry-pole in a labor dispute between the clerks and the Company. We are not interested in getting in an argument with the City. And that's what they are doing to you."

The second time I asked Mr. Powers to go back, they arrested him on a complaint of the police officers. And I had further conversations with Mr. Younger, sited some cases to him, subsequently wrote him a letter, sent him what I considered a germane authority to the National Labor Relations Board and the Supreme Court of the United States.

The third time I sent Mr. Powers and Mr. Norwood back, told them to not have the ladies go [14] back, because they didn't need to be arrested. When they called the police, when the Company called the police, I think the City attorney ought to have realized what was going on, that Albertson's was merely using the Police Department of Huntsville as a pry-pole in their labor dispute with this union. And the police officers at that time refused to make an arrest unless the Company agent came up here and got a warrant.

Now, at that time when they were arrested, the bond went up to $550 for each Defendant. This is not a ques-

tion of criminal trespass. This is a question of a company using a city in the middle of a labor dispute—using the police power of the City in a labor dispute. And it's not a question of criminal trespass. It's a question that properly addresses itself to the National Labor Relations Board where we have properly complained and where the administrative process is taking place today, right now. And we respectfully submit that based on those facts, that what's in the record actually, increasing bond and that sort of thing, what happened the third time around, is nothing but an effort of the Company [15] to use this Court and these police officers on their side of a labor dispute. And I'm sure the City will want to maintain neutrality. And as I say, we are not here claiming any exemption from the ordinary criminal processes of the soverign State of Alabama or its agent, the City of Huntsville.

What we are saying to the Court is that this is not a simple case of criminal trespass. It is a serious case of a labor dispute—there's no violence—of a labor dispute where the Company is attempting to use the City and its police powers on their side to run the Union off from exercising the right that the Constitution of the United States and the Congress of the United States gave that labor organization, and we think, the Constitution of the State of Alabama gave it, like freedom of speech and their Article 1, section 4. And we respectfully submit that the Court lacks subject matter jurisdiction and should dismiss these cases on that basis. I am going to tell you, Your Honor, I want to repeat again: We don't claim any exemptions from the general application of the criminal laws. We understand the State Court authority of adjunctions in labor [16] disputes. They have people arrested if they violate the law, if there's a genuine viola-

tion of the law. And there's not an exemption that the National Labor Relations Act that Congress has carved out. That that's not the case here, Your Honor. That's not the case here at all.

And I'm sorry. I told Mr. Younger that we didn't want to get involved with the City. We've got enough with the Company without getting involved with the City. And I told him if he dismissed these cases, we wouldn't even include him in the Federal lawsuit. He didn't see his way clear for whatever reasons. I'm sure those he has are valid reasons to him.

But we think the simple way to dispose of this, Your Honor, is for you to cut through all the facade of being a "criminal trespass" and see it for what it is: an attempt of the Company to use the City and its police powers to keep these people from exercising their rights guaranteed them by the Federal Constitution and Federal Statute and we think the State Statute and the State Constitution.

The Court: Thank you, Mr. Barrett. Mr. [17] Miller, do you want to be heard?

Mr. Miller: I wish the Judge would take jurisdiction of Federal Judge.

The Court: Well, Mr. Barrett, you argued very persuasively. But I am not convinced at this time of the justice of what you are seeking. We are not inclined to let an enterprise or business make use of the City's laws to side against the Union nor are we inclined to let a union take advantage of any imagined immunity that they might have by virtue of the NLRA.

I am going to deny your motion. We will go to trial.

Mr. Miller: Sgt. Cruse.

SGT. JACKIE CRUSE

was sworn and testified as follows:

The Court: Mr. Barrett, would you like the rule invoked?

Mr. Barrett: Mr. Ray is going to try these, Your Honor.

Mr. Ray: Yes, sir, Your Honor. I am not sure that's going to work since we've got four different cases.

[18] Mr. Miller: That's one of the reasons I would like to consolidate them. In other words, if we try these one at a time, then I am going to have to exclude your people, and my people will go out. And it gets kind of touch and go as to who to send to court at one time on what. In other words, the three Defendants over there, if we are trying them together, they can stay in here. But then if we are not, then they are going to have to go out on the rule. In commensurate with that, my witnesses, whoever they may be, would have to go out. But what I suggest, and it makes no difference to me, is everybody can stay in here just like they are.

Mr. Ray: That's fine.

The Court: Take the stand.

[105] The Court: Thank you, Mr. Miller.

Gentlemen, there's been some issue raised over whether this was a matter that should be before this Court or purely a union dispute. Of course, this Court has nothing to do with union matters of one type or another. I do feel that a union dispute and a criminal transgression or violation can under certain circumstances go hand in hand. One does not necessarily preclude the other. It's one of my numerous blessings that I do not have to decide NLRA [106] issues. That leaves me with a very simple question of whether or not some violation of this particular City Ordinance took place on the date in question, and I am satisfied that it did. I am not convinced that it's deserving of any great deal of punishment.

I'm going to enter a finding of guilty on each charge against each Defendant and impose a fine of $25 and $17 cost.

Now, that particular penalty is for the cases that are presently before the Court. If some violated, provable arrest was made in the future involving the same or similar circumstances, then the Court would probably take a considerable dimmer view of it.

Mr. Ray: If it please the Court, we would like to pray an appeal.

The Court: Yes, sir. The Clerk will be glad to help you any way they can.

Mr. Ray: Thank you, Your Honor. May they remain on the same bonds, Your Honor?

The Court: Mr. Ray, give me a minute or two and let me check that out.

There are some professional bonds here [107] and some cash bonds posted.

APPENDIX B

CIRCUIT COURT NOS. CC82-0002CB
thru CC82-0008CB

APPEAL

TO

COURT OF CRIMINAL APPEALS OF ALABAMA

FROM

CIRCUIT COURT

OF

MADISON COUNTY, ALABAMA

POWERS; NORWOOD; WOODLEY; & BAILES
APPELLANTS

Honorable Joseph L. Battle
215 Randolph Ave. SE
Huntsville, Alabama 35801
Phone: 534-8478

ATTORNEY RETAINED

VS.

CITY OF HUNTSVILLE
APPELLEE

JUDGE DANIEL B. BANKS, JR.
JUDGMENT ENTRY: 07/07/82
NOTICE OF APPEAL: 07/07/82

EDITOR'S NOTE

PAGES 14a through 42a WERE POOR HARD COPY AT THE TIME OF FILMLNG. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

CLERK'S RECORD

CE82-000206

312865	AFFIDAVIT AND WARRANT OF ARREST	

THE STATE OF ALABAMA
MADISON COUNTY

IN THE MUNICIPAL COURT OF
HUNTSVILLE, ALABAMA

AFFIDAVIT

Before me, Magistrate of the Municipal Court of Huntsville, Alabama, personally appeared this day George Malmberg who, upon first being duly sworn, states on oath that he she has probable cause for believing and does believe that Melanie Powers whose name is otherwise unknown to the affiant, did on, to wit, November 24 19 81, within twelve months before making this Affidavit and within the City of Huntsville, Alabama, or the Police Jurisdiction thereof, Melanie Powers did knowingly enter or remain unlawfully in or upon the premises of Albertsons Food Land Corp 1918 N. Parkway Huntsville, Ala., in violation of 13A-7-4 Code of Ala.

In violation of City Ordinance made and provided 79-436

Sworn to and subscribed before me this November 24 19 81

Robert W. Clemmer
Magistrate

AFFIANT [signature]
Address 1918 N. Parkway
Telephone Number 533-2416

WARRANT OF ARREST

THE STATE OF ALABAMA
MADISON COUNTY

IN THE MUNICIPAL COURT OF
HUNTSVILLE, ALABAMA

TO ANY LAWFUL OFFICER OF THE STATE OF ALABAMA:

Complaint on oath having been made before me that the offense of Criminal Trespass third degree has been committed within the City of Huntsville, Alabama, or the Police Jurisdiction thereof, and accusing Melanie Powers with committing the same you are therefore commanded forthwith to arrest said Melanie Powers and have him/her before the Municipal Court of Huntsville, Alabama to answer said charges

Witness my hand this 24 day of November 19 81

Robert W. Clemmer
Magistrate

AFFIDAVIT AND WARRANT

Summons Witness for City

WARRANT NO. 18743-C

WARRANT

MUNICIPAL COURT
HUNTSVILLE, ALABAMA

THE CITY OF HUNTSVILLE

vs.

Melanie Powers
Defendant

Residence

To Any Warden of City of Huntsville

You will receive

Melanie Powers

Charged with the offense of

Criminal Trespass

Third degree

unto your custody, and detain him

until legally discharged.

Amount of Bond $ 510.00 Dollars

Dated this 24 day of November

19 74

Robert W. Clement

Warrant Magistrate

CC82-000?CB

STATE OF ALABAMA
MADISON COUNTY

FILED IN OFFICE
1982 JAN -5 AM 2:2?

To Billy D. Hurbin Clerk of the Circuit Court

I, Wallace Dorning Clerk of the Municipal Court

hereby certify that on the 28th day of December 19 81 in the case of

City of Huntsville Plaintiff

vs. Melvin Powers Defendant

charged with the offense of Criminal Trespassing Third Degree

the following proceedings were had:

The defendant having theretofore been arrested, being present in open court, and the case having proceeded to a trial, the court rendered the following judgment:

"GUILTY Fined $ 25.00 , and sentenced

for Criminal Trespassing Third Degree

."

On the 28th day of December 19 81 , the defendant prayed for and obtained an appeal, and I herewith deliver to you all of the papers in said cause.

Wallace Dorning
Clerk of the Municipal Court

IN THE CIRCUIT COURT FOR MADISON COUNTY, ALABAMA

CASE NOS.: 122168-H, 122169-H, 122158-H, 122159-H, 122147-H, 122154-H, 122157-H

CITY OF HUNTSVILLE,

PLAINTIFF,

VS.

DEBORAH BAILS, DONALD NORWOOD, MELVIN POWERS, CANDICE WOODLEY,

DEFENDANTS.

MOTION TO DISMISS FOR FAILURE TO PROVE ALL THE ELEMENTS OF THE ORDINANCE

Come the Defendants who respectfully move the Court to dismiss their convictions in this matter as the prosecution failed to prove all the elements of the crime to wit: the City failed to prove that the Defendants manifested a culpable mental state as required by the ordinance.

Respectfully submitted,

/s/ George E. Barrett
GEORGE E. BARRETT

/s/ Charles R. Ray
CHARLES R. RAY

BARRETT & RAY, P.C.
217 SECOND AVENUE NORTH
NASHVILLE, TN 37201
615/244/2202

/s/ Joseph L. Battle/C.R.R.
JOSEPH L. BATTLE
215 RANDOLPH AVENUE, SE
HUNTSVILLE, AL 35801
205/584/8478

ATTORNEYS FOR DEFENDANTS

IN THE CIRCUIT COURT FOR MADISON COUNTY, ALABAMA

CASE NOS.: 122168-H, 122169-H, 122158-H, 122159-H, 122147-H, 122154-H, 122157-H

CITY OF HUNTSVILLE,

PLAINTIFF,

VS.

DEBORAH BAILS, DONALD NORWOOD, MELVIN POWERS, CANDICE WOODLEY,

DEFENDANTS.

MOTION TO DISMISS ON THE BASIS THAT DEFENDANTS WERE ILLEGALLY SEIZED

Defendants respectfully submit that their arrest was invalid under the Fourth Amendment, in that the facts underlying their arrest were not presented to a magistrate to establish that there was probable cause to issue the warrants. Therefore, the Municipal Court lacked subject matter jurisdiction and the warrants should have been dismissed.

Respectfully submitted,

/s/ George E. Barrett
GEORGE E. BARRETT

/s/ Charles R. Ray
CHARLES R. RAY

BARRETT & RAY, P.C.
217 SECOND AVENUE NORTH
NASHVILLE, TN 37201
615/244/2202

/s/ Joseph L. Battle/C.R.R.
JOSEPH L. BATTLE
215 RANDOLPH AVENUE, SE
HUNTSVILLE, AL 35801
205/584/8478

ATTORNEYS FOR DEFENDANTS

IN THE CIRCUIT COURT FOR MADISON COUNTY, ALABAMA

CASE NOS.: 122168-H, 122169-H, 122158-H, 122159-H, 122147-H, 122154-H, 122157-H

CITY OF HUNTSVILLE,

PLAINTIFF,

VS.

DEBORAH BAILS, DONALD NORWOOD, MELVIN POWERS, CANDICE WOODLEY,

DEFENDANTS.

MOTION TO DISMISS

Come the Defendants in the above-captioned matter who respectfully move this Court to dismiss the above-captioned action upon the ground that trespassory organizational solicitation is protected activity under Section 7 of the National Labor Relations Act, 29 U.S.C. §157, and this Court lacks subject matter jurisdiction under the doctrine of pre-emption.

Respectfully submitted,

/s/ George E. Barrett
GEORGE E. BARRETT

/s/ Charles R. Ray
CHARLES R. RAY

BARRETT & RAY, P.C.
217 SECOND AVENUE NORTH
NASHVILLE, TN 37201
615/244/2202

/s/ Joseph L. Battle/C.R.R.
JOSEPH L. BATTLE
215 RANDOLPH AVENUE, SE
HUNTSVILLE, AL 35801
205/584/8478

ATTORNEYS FOR DEFENDANTS

IN THE CIRCUIT COURT FOR MADISON COUNTY, ALABAMA

CASE NOS.: 122168-H, 122169-H, 122158-H, 122159-H, 122147-H, 122154-H, 122157-H

CITY OF HUNTSVILLE,

PLAINTIFF,

VS.

DEBORAH BAILS, DONALD NORWOOD, MELVIN POWERS, CANDICE WOODLEY,

DEFENDANTS.

MOTION TO DECLARE §13A-7-4 CODE OF ALABAMA UNCONSTITUTIONAL

Come the Defendants who respectfully request this Court to declare Section 13A-7-4, Code of Alabama, unconstitutional as being violative of the First Amendment to the United States Constitution; the due process clause of the Fourteenth and Fifteenth Amendments to the United States Constitution in that the ordinance is unconstitutionally vague and overbroad. Finally, the Defendants respectfully request the Court to declare the ordinance unconstitutional as it allows for selective prosecution in violation of the equal protection clause of the Fourteenth Amendment.

Respectfully submitted,

/s/ George E. Barrett
GEORGE E. BARRETT

/s/ Charles R. Ray
CHARLES R. RAY

BARRETT & RAY, P.C.
217 Second Avenue, North
Nashville, Tennessee 37201
(615) 244-2202

/s/ Joseph L. Battle/C.R.R.
JOSEPH L. BATTLE

215 Randolph Avenue, SE
Huntsville, Alabama 35801
(205) 584-8478

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

CITY OF HUNTSVILLE,

vs. CC 82-0002CB

MELVIN POWERS,

Defendant

ORDER

Date: July 7, 1982

This matter being duly scheduled for trial, the parties being present and before The Court, the Defendant files certain motions, namely: A motion to declare the criminal trespass statute of the State of Alabama unconstitutional; a motion to dismiss the action on the grounds that the activity was protected by the National Labor Relations Act; a motion to dismiss for failure of the prosecution to establish venue; a motion to dismiss on the grounds that there was not probable cause to issue the warrants; and a motion to dismiss for failure to prove all the elements of the ordinance. After consideration of same, those motions are DENIED. The parties stipulate that this matter be submitted to The Court on the transcript of the proceedings in the Municipal Court of the City of Huntsville. After consideration of the transcript, designated Exhibit A, The Court finds the Defendant guilty of criminal trespass in the third degree as charged.

It is therefore ORDERED, ADJUDGED, AND DECREED by The Court that the Defendant be and is hereby found to be guilty of criminal trespass in the third

degree. It is ORDERED that the Defendant be fined the sum of TWENTY-FIVE DOLLARS ($25.00) and court costs.

The Defendant giving oral notice of intent to appeal, The Court sets appeal bond at ONE HUNDRED DOLLARS ($100.00).

/s/ Daniel B. Banks Jr.
Daniel B. Banks, Jr.
Circuit Judge

AP II-3 Notice of Appeal to the Court of Criminal Appeals of Alabama

NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

Melvin Powers
Appellant

In the Circuit Court of Madison County
Case No. [illegible]

City of Huntsville, Alabama
~~State of Alabama~~
Appellee

Date of Judgment
July 7, 1982
~~Date of judgment or order~~

Notice is hereby given that Appellant appeals to the above-named court from the judgment of conviction

~~(~~

~~)~~

[or other order describing it]

entered in this case on the 7th of July, 19 82, adjudging the defendant to be guilty of the offense of Criminal Impersonation in the third degree

and as punishment thereof sentencing the defendant as follows [redacted] 110 Dollars Five and Costs

Appellant
[X] moves for an order fixing bail on appeal and for suspension of execution of sentence (15 § 372)
[ ] waives benefit of suspended sentence (15 § 371)

Filed July 7, 1982
Date

Joseph C. Scully
[illegible]
Address

Phone No.

Certified as a true copy
Witness D Hankins
Circuit Clerk

Joseph C. Scully
Attorney for Appellant

ORDER OF TRIAL COURT GRANTING MOTION FOR APPEAL BOND AND SUSPENSION OF SENTENCE

[X] Motion granted. The trial clerk is directed to admit the defendant to bail fixed at $ 100.00 with sufficient surety as provided by Title 15 § 372

D B Banks Jr
Circuit Judge

MC 82-0003C B

STATE OF ALABAMA
MADISON COUNTY

FILED IN OFFICE
1982 JAN -5 AM 2:20

To Billy D. Harbin Clerk of the Circuit Court

I, Wallace Dorning Clerk of the Municipal Court

hereby certify that on the 28th day of December 19 81 in the case of

City of Huntsville Plaintiff

vs. Melvin W. Powers Defendant

charged with the offense of Criminal Trespassing Third Degree

the following proceedings were had:

The defendant having theretofore been arrested, being present in open court, and the case having proceeded to a trial, the court rendered the following judgment:

"GUILTY Fined $ 25.00 , and sentenced for Criminal Trespassing Third Degree"

On the 28th day of December 19 81 , the defendant prayed for and obtained an appeal, and I herewith deliver to you all of the papers in said cause.

Wallace Dorning
Clerk of the Municipal Court

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

CITY OF HUNTSVILLE,

vs. CC 82-0003CB

MELVIN W. POWERS,

Defendant

ORDER

Date: July 7, 1982

This matter being duly scheduled for trial, the parties being present and before The Court, the Defendant files certain motions, namely. A motion to declare the criminal trespass statute of the State of Alabama unconstitutional; a motion to dismiss the action on the grounds that the activity was protected by the National Labor Relations Act; a motion to dismiss for failure of the prosecution to establish venue; a motion to dismiss on the grounds that there was not probable cause to issue the warrants; and a motion to dismiss for failure to prove all the elements of the ordinance. After consideration of same, those motions are DENIED. The parties stipulate that this matter be submitted to The Court on the transcript of the proceedings in the Municipal Court of the City of Huntsville. After consideration of the transcript, designated Exhibit A, The Court finds the Defendant guilty of criminal trespass in the third degree as charged.

It is therefore ORDERED, ADJUDGED, AND DECREED by The Court that the Defendant be and is hereby found to be guilty of criminal trespass in the third degree. It is ORDERED that the Defendant be fined the sum of FIFTY DOLLARS ($50.00) and court costs.

The Defendant giving oral notice of intent to appeal, The Court sets appeal bond at ONE HUNDRED FIFTY DOLLARS ($150.00).

/s/ Daniel B. Banks Jr.
Daniel B. Banks, Jr.
Circuit Judge

AP II-3 Notice of Appeal to the Court of Criminal Appeals of Alabama — Printed and for Sale by Roberts & Son, Birmingham

NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

Melvin Powers
Appellant

In the Circuit Court of Madison County
Case No. 83 00528

City of Huntsville, Alabama
State of Alabama
Appellee

Date of Judgment
July 7, 1983
Date Judgment Entered

Notice is hereby given that Appellant appeals to the above-named court from the judgment of conviction

( ) [or other order describing it]

entered in this case on the 7th of July, 19 83, adjudging the defendant to be guilty of the offense of Criminal Trespass in the Third Degree and as punishment thereof sentencing the defendant as follows: Pay a fine of Fifty and no/100 Dollars ($50.00) and costs.

Appellant
[X] moves for an order fixing bail on appeal and for suspension of execution of sentence (A.R.A. § 32)
[ ] waives benefit of suspended sentence (A.R.A. § 33)

Filed July 7, 1983
Date

Certified as a true copy
Billy D. Hankins
Circuit Clerk

Joseph C. Basile, III, Randolph Arcade Suite
Huntsville Alabama 35801 539-5413
Address Phone No.

Joseph C. Basile
Attorney for Appellant

ORDER OF TRIAL COURT GRANTING MOTION FOR APPEAL BOND AND SUSPENSION OF SENTENCE

[X] Motion granted. The trial clerk is directed to admit the defendant to bail fixed at $ Personal with sufficient surety as provided by Title 15 § 372

Circuit Judge

CC82-00041CK

STATE OF ALABAMA
MADISON COUNTY

FILED IN OFFICE
'82 JAN -5 AM 2:26

To Billy D. Harbin Clerk of the Circuit Court:

I, Wallace Dorning Clerk of the Municipal Court

hereby certify that on the 28th day of December 19 81 in the case of

City of Huntsville Plaintiff

vs. Melvin W. Powers Defendant

charged with the offense of Criminal Trespassing Third Degree

the following proceedings were had.

The defendant having theretofore been arrested, being present in open court, and the case having proceeded to a trial, the court rendered the following judgment:

GUILTY Fined $ 25.00 , and sentenced

for Criminal Trespassing Third Degree

On the 28th day of December 19 81 , the defendant prayed for and obtained an appeal, and I herewith deliver to you all of the papers in said cause.

Wallace Dorning
Clerk of the Municipal Court

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

CITY OF HUNTSVILLE,

vs. CC 82-0004CB

MELVIN W. POWERS,

Defendant

ORDER

Date: July 7, 1982

This matter being duly scheduled for trial, the parties being present and before The Court, the Defendant files certain motions, namely: A motion to declare the criminal trespass statute of the State of Alabama unconstitutional; a motion to dismiss the action on the grounds that the activity was protected by the National Labor Relations Act; a motion to dismiss for failure of the prosecution to establish venue; a motion to dismiss on the grounds that there was not probable cause to issue the warrants; and a motion to dismiss for failure to prove all the elements of the ordinance. After consideration of same, those motions are DENIED. The parties stipulate that this matter be submitted to The Court on the transcript of the proceedings in the Municipal Court of the City of Huntsville. After consideration of the transcript, designated Exhibit A, The Court finds the Defendant guilty of criminal trespass in the third degree as charged.

It is therefore ORDERED, ADJUDGED, AND DECREED by The Court that the Defendant be and is here-

by found to be guilty of criminal trespass in the third degree. It is ORDERED that the Defendant be fined the sum of ONE HUNDRED DOLLARS ($100.00) and court costs.

The Defendant giving oral notice of intent to appeal, The Court sets appeal bond at TWO HUNDRED DOLLARS ($200.00).

/s/ Daniel B. Banks Jr.
Daniel B. Banks, Jr.
Circuit Judge

AP 11-3 Notice of Appeal to the Court of Criminal Appeals of Alabama

NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

Melvin Powers
Appellant

v.

City of Huntsville, Alabama
Appellee

In the Circuit Court of Madison County
Case No. 3-2-82-43

Date of Judgment or Order
July 7, 1982

Notice is hereby given that Appellant appeals to the above-named court from the judgment of conviction

[or other order describing it]

entered in this case on the 7th of July, 19 82, adjudging the defendant to be guilty of the offense of Criminal Trespass in the Third Degree and as punishment thereof sentencing the defendant as follows: a fine Hundred dollars One Hundred Dollar Fine and Costs

Appellant
[X] moves for an order fixing bail on appeal and for suspension of execution of sentence (T. 15, § 322)
[ ] waives benefit of suspended sentence (T. 15, § 331)

Filed July 7, 1982
Date

I certified as a true copy
Billy D. Hardin
Circuit Clerk

Joseph L. Bullock III Randolph Square
Huntsville, Alabama 35813
Address Phone No.
Joseph L. Bullock
Attorney for Appellant

ORDER OF TRIAL COURT GRANTING MOTION FOR APPEAL BOND AND SUSPENSION OF SENTENCE

[X] Motion granted. The trial clerk is directed to admit the defendant to bail fixed at $ 200.00 with sufficient surety as provided by Title 15, § 312

July 7, 1982
Date

D. B. Banks Jr.
Circuit Judge

CC82-0005CB

STATE OF ALABAMA
MADISON COUNTY

FILED IN OFFICE
'82 JAN -5 AM 2:20

To Billy D. Harbin Clerk of the Circuit Court:

I, Wallace Corning Clerk of the Municipal Court hereby certify that on the 28th day of December 19 81 in the case of City of Huntsville Plaintiff vs. Donald Norwood Defendant charged with the offense of Criminal Trespassing Third Degree the following proceedings were had:

The defendant having theretofore been arrested, being present in open court, and the case having proceeded to a trial, the court rendered the following judgment:

"GUILTY Fined $ 25.00 , and sentenced _____ for Criminal Trespassing Third Degree ."

On the 28th day of December 19 81 , the defendant prayed for and obtained an appeal, and I herewith deliver to you all of the papers in said cause.

Wallace Corning
Clerk of the Municipal Court

IN THE CIRCUIT COURT OF MADISON
COUNTY, ALABAMA

CITY OF HUNTSVILLE,

vs. CC 82-0005CB

DONALD NORWOOD,

Defendant

ORDER

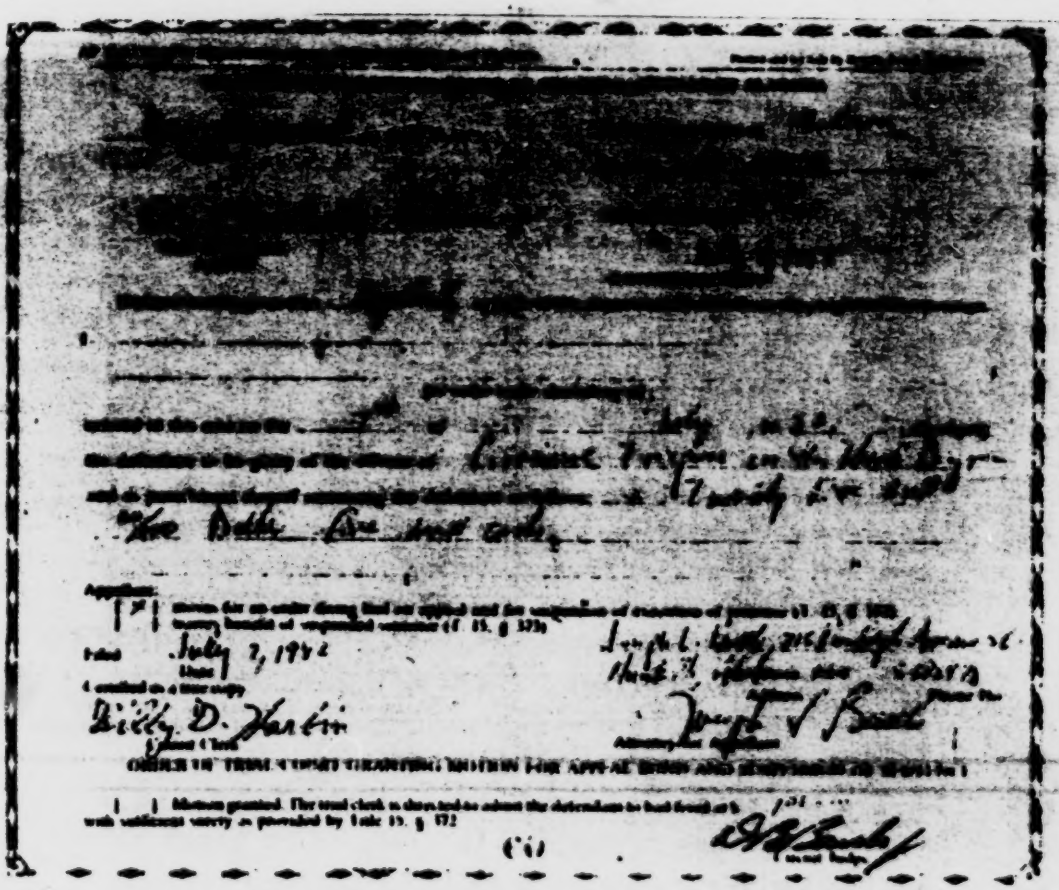
Date: July 7, 1982

This matter being duly scheduled for trial, the parties being present and before The Court, the Defendant files certain motions, namely: A motion to declare the criminal trespass statute of the State of Alabama unconstitutional; a motion to dismiss the action on the grounds that the activity was protected by the National Labor Relations Act; a motion to dismiss for failure of the prosecution to establish venue; a motion to dismiss on the grounds that there was not probable cause to issue the warrants; and a motion to dismiss for failure to prove all the elements of the ordinance. After consideration of same, those motions are DENIED. The parties stipulate that this matter be submitted to The Court on the transcript of the proceedings in the Municipal Court of the City of Huntsville. After consideration of the transcript, designated Exhibit A, The Court finds the Defendant guilty of criminal trespass in the third degree as charged.

It is therefore ORDERED, ADJUDGED, AND DECREED by The Court that the Defendant be and is hereby found to be guilty of criminal trespass in the third degree. It is ORDERED that the Defendant be fined the sum of TWENTY-FIVE DOLLARS ($25.00) and court costs.

The Defendant giving oral notice of intent to appeal, The Court sets appeal bond at ONE HUNDRED DOLLARS ($100.00).

/s/ Daniel B. Banks Jr.
Daniel B. Banks, Jr.
Circuit Judge



CC82-0006CB

STATE OF ALABAMA
MADISON COUNTY

FILED IN OFFICE
'82 JAN -5 AM 2:20

To Billy D. Harbin Clerk of the Circuit Court.

I, Wallace Dorning Clerk of the Municipal Court hereby certify that on the 28th day of December 19 81 in the case of City of Huntsville Plaintiff vs. Donand V. Norwood Defendant charged with the offense of Criminal Trespassing Third Degree the following proceedings were had:

The defendant having theretofore been arrested, being present in open court, and the case having proceeded to a trial, the court rendered the following judgment:

"GUILTY Fined $ 25.00 , and sentenced for Criminal Trespassing Third Degree ."

On the 28th day of December 19 81 , the defendant prayed for and obtained an appeal, and I herewith deliver to you all of the papers in said cause.

Wallace Dorning
Clerk of the Municipal Court

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

CITY OF HUNTSVILLE,

vs. CC 82-0006CB

DONALD NORWOOD,

Defendant

ORDER

Date: July 7, 1982

This matter being duly scheduled for trial, the parties being present and before The Court, the Defendant files certain motions, namely: A motion to declare the criminal trespass statute of the State of Alabama unconstitutional; a motion to dismiss the action on the grounds that the activity was protected by the National Labor Relations Act; a motion to dismiss for failure of the prosecution to establish venue; a motion to dismiss on the grounds that there was not probable cause to issue the warrants; and a motion to dismiss for failure to prove all the elements of the ordinance. After consideration of same, those motions are DENIED. The parties stipulate that this matter be submitted to The Court on the transcript of the proceedings in the Municipal Court of the City of Huntsville. After consideration of the transcript, designated Exhibit A, The Court finds the Defendant guilty of criminal trespass in the third degree as charged.

It is therefore ORDERED, ADJUDGED, AND DECREED by The Court that the Defendant be and is hereby found to be guilty of criminal trespass in the third degree. It is ORDERED that the Defendant be fined the sum of FIFTY DOLLARS ($50.00) and court costs.

The Defendant giving oral notice of intent to appeal, The Court sets appeal bond at ONE HUNDRED FIFTY DOLLARS ($150.00).

/s/ Daniel B. Banks Jr.
Daniel B. Banks, Jr.
Circuit Judge

AP 10-3 Notice of Appeal to the Court of Criminal Appeals of Alabama

NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

Dee Norwood
Appellant

In the Circuit Court of Madison County
Case No. CC 82 0060 CB

v.

City of Huntsville, Alabama
State of Alabama
Appellee

Date of Judgment
July 7, 1982
Date Judgment Entered

Notice is hereby given that Appellant appeals to the above-named court from the judgment of conviction

[or other order disposing of]

entered in the case on the 7th of July, 19 82 adjudging the defendant to be guilty of the offense of Criminal Trespass in the third Degree and as punishment thereof sentencing the defendant as follows: a fine of Fifty and no/100 Dollars and costs

Appellant

[X] moves for an order fixing bail on appeal and for suspension of execution of sentence (T 15, § 372)
[ ] waives benefit of suspended sentence (T 15, § 373)

Joseph L Scott 215 Fountain Ct SE Huntsville, Alabama 35801 534-8483
Address Phone No

Filed July 7, 1982
Date

Certified as a true copy
Bill D Hankins
Circuit Clerk

Joseph L Scott
Attorney for Appellant

ORDER OF TRIAL COURT GRANTING MOTION FOR APPEAL BOND AND SUSPENSION OF SENTENCE

[X] Motion granted. The trial clerk is directed to admit the defendant to bail fixed at $ 150.00 with sufficient surety as provided by Title 15, § 372

7-7-82
Date

Circuit Judge

IN THE CIRCUIT COURT OF MADISON
COUNTY, ALABAMA

CITY OF HUNTSVILLE,

vs. CC 82-0007CB

CANDACE WOODLEY,

Defendant

ORDER

Date: July 7, 1982

This matter being duly scheduled for trial, the parties being present and before The Court, the Defendant files certain motions, namely: A motion to declare the criminal trespass statute of the State of Alabama unconstitutional; a motion to dismiss the action on the grounds that the activity was protected by the National Labor Relations Act; a motion to dismiss for failure of the prosecution to establish venue; a motion to dismiss on the grounds that there was not probable cause to issue the warrants; and a motion to dismiss for failure to prove all the elements of the ordinance. After consideration of same, those motions are DENIED. The parties stipulate that this matter be submitted to The Court on the transcript of the proceedings in the Municipal Court of the City of Huntsville. After consideration of the transcript, designated Exhibit A, The Court finds the Defendant guilty of criminal trespass in the third degree as charged.

It is therefore ORDERED, ADJUDGED, AND DECREED by The Court that the Defendant be and is hereby found to be guilty of criminal trespass in the third degree. It is ORDERED that the Defendant be fined the sum of TWENTY-FIVE DOLLARS ($25.00) and court costs.

The Defendant giving oral notice of intent to appeal, The Court sets appeal bond at ONE HUNDRED DOLLARS ($100.00).

/s/ Daniel B. Banks Jr.
Daniel B. Banks, Jr.
Circuit Judge

CC82-00070S

STATE OF ALABAMA
MADISON COUNTY

FILED IN OFFICE
1982 JAN -5 AM 2:20

To Billy D. Harbin Clerk of the Circuit Court:

I, Wallace Dorning Clerk of the Municipal Court hereby certify that on the 28th day of December 1981 in the case of City of Huntsville Plaintiff vs. Candence R. Woodley Defendant charged with the offense of Criminal Trespassing Third Degree the following proceedings were had:

The defendant having theretofore been arrested, being present in open court, and the case having proceeded to a trial, the court rendered the following judgment:

"GUILTY Fined $ 25.00 , and sentenced for Criminal Trespassing Third Degree ."

On the 28th day of December 1981, the defendant prayed for and obtained an appeal, and I herewith deliver to you all of the papers in said cause.

Wallace Dorning
Clerk of the Municipal Court

AP 16-3 Notice of Appeal to the Court of Criminal Appeals of Alabama

NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

Cordaro Woodley
Appellant

In the Circuit Court of Madison County
Case No. 82-CC-79CP

v.

City of Huntsville, Alabama
Municipality of Alabama
Appellee

Date of Judgment or Date Judgment Entered
July 7, 1982

Notice is hereby given that Appellant appeals to the above-named court from the judgment of conviction

[illegible]

for other order disposing of

entered in this case on the 7th day of July, 19 82 adjudging the defendant to be guilty of the offense of Criminal Trespass in the Third Degree and as punishment thereof sentencing the defendant as follows: Thirty Five and 00/100 Dollars fine and Court.

Appellant
[X] moves for an order fixing bail on appeal and for suspension of execution of sentence (T. 15, § 372)
[ ] waives benefit of suspended sentence (T. 15, § 371)

Filed July 7, 1982
Date

Joseph L. Scott, IV, Randolph Ave. SE
Huntsville, Alabama 1984 > 1454 78
Address Phone No.

Certified as a true copy
Date

Billy D. Harbin
Circuit Clerk

Joseph L. Scott
Attorney for Appellant

ORDER OF TRIAL COURT GRANTING MOTION FOR APPEAL BOND AND SUSPENSION OF SENTENCE

[X] Motion granted. The trial clerk is directed to admit the defendant to bail fixed at $ [illegible] with sufficient surety as provided by Title 15, § 372

[illegible]

D. E. Bradley Jr.
Circuit Judge

CC82-0008CB

STATE OF ALABAMA
MADISON COUNTY

FILED IN OFFICE
1982 JAN -5 AM 2:20

To Billy D. Harbin *Clerk of the Circuit Court:*

I, Wallace Dorning *Clerk of the Municipal Court*
hereby certify that on the 28th day of December 19 81 *in the case of*
City of Huntsville *Plaintiff*
vs. Debra B. Bailes *Defendant*
charged with the offense of Criminal Trespassing Third Degree
the following proceedings were had:

The defendant having theretofore been arrested, being present in open court, and the case having proceeded to a trial, the court rendered the following judgment:

"GUILTY Fined $ 25.00 , and sentenced
for Criminal Trespassing Third Degree
."

On the 28th *day of* December *19* 81 *, the defendant prayed for and obtained an appeal, and I herewith deliver to you all of the papers in said cause.*

Wallace Dorning
Clerk of the Municipal Court

IN THE CIRCUIT COURT OF MADISON
COUNTY, ALABAMA

CITY OF HUNTSVILLE,

VS. CC 82-0008CB

DEBRA B. BAILES,

Defendant

ORDER

Date: July 7, 1982

This matter being duly scheduled for trial, the parties being present and before The Court, the Defendant files certain motions, namely: A motion to declare the criminal trespass statute of the State of Alabama unconstitutional; a motion to dismiss the action on the grounds that the activity was protected by the National Labor Relations Act; a motion to dismiss for failure of the prosecution to establish venue; a motion to dismiss on the grounds that there was not probable cause to issue the warrants; and a motion to dismiss for failure to prove all the elements of the ordinance. After consideration of same, those motions are DENIED. The parties stipulate that this matter be submitted to The Court on the transcript of the proceedings in the Municipal Court of the City of Huntsville. After consideration of the transcript, designated Exhibit A, The Court finds the Defendant guilty of criminal trespass in the third degree as charged.

It is therefore ORDERED, ADJUDGED, AND DECREED by The Court that the Defendant be and is hereby found to be guilty of criminal trespass in the third degree. It is ORDERED that the Defendant be fined the sum of TWENTY-FIVE DOLLARS ($25.00) and court costs.

The Defendant giving oral notice of intent to appeal, The Court sets appeal bond at ONE HUNDRED DOLLARS ($100.00).

/s/ Daniel B. Banks Jr.
Daniel B. Banks, Jr.
Circuit Judge

AP 16-3 Notice of Appeal to the Court of Criminal Appeals of Alabama — Printed and for Sale by Roberts & Son, Birmingham

NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

Debra Bubb
Appellant

In the Circuit Court of Madison County
Case No. 81-CC

City of Huntsville, Alabama
State of Alabama
Appellee

Date of Judgment
or Date Judgment Order
July 7, 1982

Notice is hereby given that Appellant appeals to the above-named court from the judgment of conviction

[or other order describing it]

entered in this case on the 7th day of July, 1982, adjudging the defendant to be guilty of the offense of Criminal Trespass in the Third Degree and as punishment thereof sentencing the defendant as follows: a fine of Twenty Dollars and Court Costs

Appellant
[X] moves for an order fixing bail on appeal and for suspension of execution of sentence (T. 15, § 372)
[ ] waives benefit of suspended sentence (T. 15, § 373)

Filed July 7, 1982
Date

Certified as a true copy

Betty U. Martin
Circuit Clerk

Joseph L. Scott, 215 Randolph Ave.
Huntsville, Alabama 35801 539-5593 V.A.
Address Phone No.

Joseph L. Scott
Attorney for Appellant

ORDER OF TRIAL COURT GRANTING MOTION FOR APPEAL BOND AND SUSPENSION OF SENTENCE

[X] Motion granted. The trial clerk is directed to admit the defendant to bail fixed at $ [illegible] with sufficient surety as provided by Title 15, § 372

D. B. Bankston
Circuit Judge

APPENDIX C

[Filed Aug. 2, 1983]

THE STATE OF ALABAMA–
JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1982-83

8 Div. 734

Melvin Powers, Don Norwood,
Candace Woodley, Debra Bailes

v.

City of Huntsville

Appeal from Madison Circuit Court

SAM TAYLOR, JUDGE

Defendants, Melvin Powers, Don Norwood, Candace Woodley and Debra Bailes, were charged with criminal trespass in the third degree pursuant to §13A-74, Code of Alabama 1975, for their involvement in three separate incidents which occurred in the Albertsons store in Huntsville, Alabama on November 24, 1981. Powers was charged with three separate violations, Norwood was charged with two separate violations and Woodley and

Bailes were each charged with one violation. These seven separate actions were consolidated for trial which resulted in convictions in all seven cases. Powers was fined $25, $50 and $100, respectively, for his three criminal trespass convictions resulting from his three successive instances of trespass. Norwood was fined $25 and $50, respectively, for his two criminal trespass convictions. Woodley and Bailes were each fined $25 for their single convictions for criminal trespass.

The facts of the case are essentially undisputed. The trespasses arose out of union organizational efforts being conducted by the four defendants. Powers and Norwood were employees of the retail clerks union. Ms. Woodley and Ms. Bailes had been discharged the day before by Albertsons and on this occasion both were wearing jackets reading on the back, Retail Clerks' Union Local 1557. It is manifestly apparent that all parties knew these people were present in the delicatessen section of the Albertsons store in connection with efforts to organize the employees. The store director requested all four of them to leave the premises and they refused. He called the police and the police requested them to leave. Mr. Powers attempted to present the officer with a card identifying himself with the union. There was also a National Labor Relations Board form on the table where the appellants were seated. Upon appellants' refusal to leave, the police officer placed Powers under arrest and escorted all of them from the premises. Later that afternoon, they returned; a similar incident occurred with similar results except that this time all four of them were arrested. Later that evening, Mr. Powers and Mr. Norwood returned to the store and this time were arrested pursuant to a signed warrant.

Powers, Norwood, Woodley and Bailes were tried and convicted in Huntsville Municipal Court. At the trial de

novo in the Madison County Circuit Court, a transcript of proceedings in the municipal court was received in evidence by agreement. The only testimony offered in circuit court was to establish venue. The defendants presented no evidence.

The central issue raised on this appeal is whether or not the federal government by the passage of the National Labor Relations Act preempted the law in this field, as contended by appellants, so that the state court was without jurisdiction to consider the trespass charges. In determining this issue, we are bound by and must follow the rules of law laid down by the United States Supreme Court and other federal courts in defining this thorny area of jurisdiction between the National Labor Relations Act on the one hand and the state laws on the other.

The Supreme Court in a series of cases has settled the question presented in this case adversely to appellant. The court had to determine and balance the right of employees to organize and of unions to solicit employees to organize on the one hand, and private property rights on the other. Both these rights are absolutely guaranteed by law. A review of the cases is appropriate. In *Sears, Roebuck & Co. v. San Diego County District Council of Carpenters*, 436 U.S. 180, 98 S.Ct. 1745, 56 L.Ed. 2d 209 (1978) the United States Supreme Court spelled out the law regarding the federal preemption insofar as picketing is concerning. The majority of the court ruled:

> "Because the assertion of state jurisdiction in a case of this kind does not create a significant risk of prohibition of protected conduct, we are unwilling to presume that Congress intended the arguably protected character of the Union's conduct to deprive the California Courts of jurisdiction to entertain Sears's trespass action."

This case is categorized as an organizational solicitation case. The United States Supreme Court held in *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 75 S.Ct. 679, 100 L.Ed. 975 (1956) that there were circumstances in which non-employee union organizers have a limited right to access to an employer's premises for the purposes of engaging in organization solicitation. In *Babcock*, the employer refused to permit non-employee union organizers to distribute union literature in the company-owned parking lots. The court made a distinction between employees and non-employees engaged in organizational activities. As to employees, the court recognized the principle that no restriction may be placed on the employees's right to discuss self-organization among themselves unless the employer can demonstrate the necessity to maintain production.

As to non-employees, however, a stricter standard was established. The court refused generally to permit organizational solicitation on company property. They provided one exception only: "If the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property." (p. 113).

In *Central Hardware Co. v. National Labor Relations Board*, 407 U.S. 539, 92 S.Ct. 2238, 33 L.Ed. 2d 122 (1972), a hardware retailer caused an organizer to be arrested. The court reaffirmed the ruling in *Babcock*, quoting:

> "Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accomodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the

other. The employer may not affirmatively interfere with organization; the union may not always insist the employer aid organization. But when the inaccessibility of employees makes ineffective the reasonable attempt by non-employees to communicate with them by usual channels, the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize. 351 U.S., at page 112, 76 S.Ct. at 684."

In the more recent *Sears* case, the Supreme Court observed:

"Experience with trespassory organizational solicitation by non-employees is instructive in this regard. While *Babcock* indicates that an employer may not always bar non-employee union organizers from his property, his right to do so remains the general rule. To gain access, the union has the burden of showing that no other reasonable means of communicating its organizational message to the employees exists or that the employers access rules discriminate against union solicitation. That the burden imposed on the union is a heavy one is evidenced by the fact that the balance struck by the board and the courts under the *Babcock* accomodation principle has rarely been in favor of the trespassory organizational activity."

In this case, there is no evidence that the employees could only be reached while on the employer's premises. Consequently the state law is not preempted by the National Labor Relations Act in this instance.

II

The appellants contend that their convictions should be reversed because §13A-7-4, Code of Alabama 1975

(criminal trespass in the third degree), is unconstitutional in that it is either vague and overbroad or allows selective prosecution in violation of the "equal protection" clause of the 14th amendment (U.S. Const. amend. XIV).

Section 13A-7-4 states that "[a] person is guilty of criminal trespass in the third degree when he knowingly *enters or remains unlawfully* in or upon premises." (emphasis added). The appellants argue that this language "is so overly broad and vague that persons of common intelligence must guess at its meaning and differ to its application." In support of their arguments the appellants refer to *City of Seattle v. Rice*, 93 Wash. 2d 728, 612 P.2d 792 (1980). The holding in *Rice* has been quaified in *City of Seattle v. Davis*, 32 Wash. App. 379, 647 P.2d 536 (1982), where the court validated the portion of the municipal ordinance corresponding to our §13A-7-4. Alabama's new trespass statutes are patterned after provisions of the New York Revised Penal Law. Alabama's §13A-7-4 corresponds to New York Revised Penal Law §140.05.

New York's §140.05 was upheld in *People v. Bush*, 39 N.Y. 2d 529, 384 N.Y.S. 2d 733, 349 N.E. 2d 832 (1976). New York's §140.10, which corresponds to Alabama's §13A-7-3 (criminal trespass in the second degree) was upheld in *Ahmed v. Rockefeller*, 308 F.Supp. 935 (S.D.N.Y. 1970). Although a different statute was involved in *Ahmed*, the United States District Court analyzed and validated the same "enters or remains unlawfully" language found in §13A-7-4. That court reasoned:

"The definition of 'trespass' is exact and straightforward, and without any explanation by the plaintiffs of just where the ambiguity lies, we conclude that it is not unconstitutionally vague. See, *Adder-*

ly v. Florida, 385 U.S. 39, 41-43, 87 S.Ct. 242, 17 L.Ed. 2d 149 (1966); *Edwards v. South Carolina*, 372 U.S. 229, 236-237, 83 S.Ct. 680, 9 L.Ed. 2d 697 (1963). Nor is it so broadly drawn that it invades an area of protected expression. Its application is limited by the word of art 'unlawfully' only to those who are in a place where they do not have a right to be. See, *Adderley v. Florida*, supra, 385 U.S. at 41-43, 47, 87 S.Ct. 242."

We do not find §13A-7-4 impermissibly vague or overbroad.

As regards the equal protection issue, neither the language of §13A-7-4 nor in its application give rise to a reasonable claim of selective inforcement.

Therefore, §13A-7-4 is not unconstitutional as challenged on this appeal.

III

Appellant's contention that the police lacked probable cause to arrest the appellants during the first two incidents is unfounded; the appellants remained on the premises after being requested to leave in the presence of the arresting officers.

The judgment of the trial court is hereby affirmed.

AFFIRMED.

ALL THE JUDGES CONCUR.

RECEIVED OCT 11 83

THE ALABAMA COURT OF CRIMINAL APPEALS

Montgomery, Alabama

RE: CC 82-0002CB thru 0008CB

8th Div. 734, MADISON Circuit Court

POWERS, NORWOOD, WOODLEY, AND BAILES

vs Appellant

CITY OF HUNTSVILLE

Appellee

Dear Sir: This is to advise you that on OCT 4 1983, the Court of Criminal Appeals announced decision of:

~~affirmance~~
~~appeal dismissed~~
✓ application for rehearing overruled
~~petition denied dismissed stricken~~

✓ No opinion.

in the above stated cause.

Yours truly,
MOLLIE JORDAN, CLERK

Kate Metcalf Clerk's Assistant

APPENDIX E

Received Oct 20 1983

IN THE SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

Madison County Circuit Court
Nos. CC82-002CB to -008CB

MELVIN POWERS, DON NORWOOD, CANDACE WOODLEY, and DEBRA BAILES,

Petitioners,

v.

CITY OF HUNTSVILLE,

Respondent.

Powers, Norwood, Woodley & Bailes
Counsel Retained

Defendants-Petitioners
Joseph L. Battle
215 Randolph Ave., SE
Huntsville, Alabama 35801
(205) 534-8478

George E. Barrett
Charles R. Ray
Michael J. Passino

217 Second Ave., North
Nashville, Tennessee 37201
(615) 244-2202

v.

City of Huntsville

Trial Judge: Daniel B. Banks, Jr.

Judgment Entry:

Trial Court:	7/07/82
Court of Criminal Appeals:	8/02/83
Petition to Rehear:	10/04/83

PETITION FOR WRIT OF CERTIORARI

Introduction

Melvin Powers, Don Norwood, Candace Woodley and Debra Bailes, defendants below, respectfully petition this Court, pursuant to rule 39 of the Alabama Rules of Appellate Procedure, to issue a writ of certiorari directed to the Alabama Court of Criminal Appeals. Specifically, petitioners request that this Court review a decision which was rendered on August 2, 1983, a copy of which is annexed hereto. Rehearing was denied on October 4, 1983.

Grounds

Petitioners respectfully submit that the Alabama Court of Criminal Appeals erred in affirming their convictions

for criminal trespass because that court found as a matter of fact that:

> [i]t is manifestly apparent that all parties knew these people [defendants] were present in the delicatessen section of the Albertsons store in connection with efforts to organize the employees [pursuant to rights guaranteed by the National Labor Relations Act].

Given the above finding, the decision affirming the convictions conflicts both with provisions of the United States Constitution and decisions of the United States Supreme Court.

Petitioners submit that a writ of certiorari should issue for the following reasons.

(1) *Rule 39(c)(1).* The decision of the Court of Criminal Appeals upholds the constitutionality of Section 13A-7-4 of the Alabama Criminal Code as applied to peaceful organizing activity protected by Section 7 of the National Labor Relations Act, 29 U.S.C. §157.

(2) Rule 39(c)(3): This case presents the following material questions of first impression:

(a) Whether Section 13-A-7-4 is overly broad and vague as applied to a peaceful organizing campaign protected by provisions of the National Labor Relations Act.

(b) Whether Section 13A-7-4 is pre-empted to the extent that criminal convictions are sought regarding a peaceful organizing campaign over which the National Labor Relations Board has assumed jurisdiction.

(c) Whether or not, consistent with due process, a person engaging in peaceful organizing can be convicted of "knowingly" remaining on property "unlawfully."

(d) Whether or not due process is offended by placing the burden on defendants to prove their innocence by establishing they were on the premise lawfully, as the Court of Criminal Appeals appears to have done.

(3) *Rule 39(c)(4).* The convictions of defendants conflict with prior decisions of the United States Supreme Court on the issues cited in items (1) and (2), above. The Supreme Court decisions relied upon are cited in the accompanying brief.

Conclusion

For the above-stated reasons, petitioners respectfully request this Court to issue a writ of certiorari to review the decision of the Court of Criminal Appeals of Alabama affirming their convictions for criminal trespass.

Respectfully submitted,

BARRETT & RAY, P.C.

/s/ George E. Barrett/M.P.
BY: George E. Barrett

/s/ Charles R. Ray/M.P.
BY: Charles R. Ray

/s/ Michael J. Passino
By: Michael J. Passino

217 Second Avenue, North
Nashville, Tennessee 37201
(615) 244-2202

/s/ Joseph L. Battle/M.P.
BY: Joseph L. Battle

215 Randolph Avenue, S.E.
Huntsville, Alabama 35801
(205) 534-8478

APPENDIX F

Mailing Address:
P.O. Box 157
Montgomery, Alabama 36101

Telephone: 261-4609

Received Nov. 28 1983

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

Re: 83-40

EX PARTE: MELVIN POWERS, DON NORWOOD, CANDACE WOODLEY and DEBRA BAILES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(RE: MELVIN POWERS, DON NORWOOD, CANDACE WOODLEY & DEBRA BAILES

Appellant

vs.

CITY OF HUNTSVILLE)

Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

_____ Appeal docketed. Future correspondence should refer to the above number.

_____ Court Reporter granted additional time to file reporter's transcript to and including

_____ Clerk/Register granted additional time to file clerk's record/record on appeal to and including

_ ___ Appell_____ granted 7 additional days to file briefs to and including

_____ Appellant(s) granted 7 additional days to file reply briefs to and including

_____ Record on Appeal filed

_____ Appendix Filed

_____ Submitted on Briefs

_XXXX Petition for Writ of Certiorari denied. No Opinion. JONES, J. – TORBERT, CJ., MADDOX, SHORES & BEATTY, JJ., CONCUR.

_____ Application for rehearing overruled. No opinion written on rehearing.

_____ Permission to file amicus curiae briefs granted.

_____

11/23/83
nsh

/s/ Robert G. Esdale

Robert G. Esdale, Clerk
Supreme Court of Alabama

APPENDIX G

ALABAMA CRIMINAL CODE

* * *

§ 13A-7-1. Definitions.

The following definitions are applicable to this article:

(1) PREMISES. Such term includes any "building," as herein defined, and any real property.

(2) BUILDING. Any structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and such term includes any vehicle, aircraft or watercraft used for the lodging of persons or carrying on business therein. Where a building consists of two or more units separately occupied or secured, each shall be deemed both a separate building and a part of the main building.

(3) DWELLING. A building which is used or normally used by a person for sleeping, living or lodging therein.

(4) ENTER OR REMAIN UNLAWFULLY. A person "enters or remains unlawfully" in or upon premises when he is not licensed, invited or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which is partly open to the public is not a license or privilege to enter or remain in that part of the building which is not

open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privileges unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner. (Acts 1977, No. 607, § 2601.)

* * *

§ 13A-7-2. Criminal trespass in the first degree.

(a) A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a dwelling.

(b) Criminal trespass in the first degree is a Class A misdemeanor. (Acts 1977, No. 607, § 2605.)

* * *

§ 13A-7-3. Criminal trespass in the second degree.

(a) A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in a building or upon real property which is fenced or enclosed in a manner designed to exclude intruders.

(b) Criminal trespass in the second degree is a Class C misdemeanor. (Acts 1977, No. 607, § 2606.)

* * *

§ 13A-7-4. Criminal trespass in the third degree.

(a) A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in or upon premises.

(b) Criminal trespass in the third degree is a violation. (Acts 1977, No. 607, § 2607.)

APPENDIX H

Received Dec. 9 1983

COURT OF CRIMINAL APPEALS

State of Alabama
P.O. Box 351
Montgomery 36101

John O. Harris
Presiding Judge

Mollie Jordan
Clerk

John C. Tyson, III
John P. DeCarlo
John G. Bookout
William M. Bowen, Jr.
Judges

December 6, 1983

Honorable Michael J. Passino
Attorney at Law
217 Second Avenue, North
Nashville, Tennessee 37201

Dear Mr. Passino:

RE: 8 Div 734, Powers, et al vs.
City of Huntsville

The Court of Criminal Appeals has today granted a stay of sixty (60) days from November 23, 1983, to allow filing of a petition for writ of certiorari in the United States Supreme Court. This stay will remain in effect until action is taken on the petition, and if petition is granted, until a decision is rendered by the United States Supreme Court.

The certificate of final judgment has been recalled from the lower court pending determination by the United States Supreme Court, *but the certificate will be reissued upon the expiration of the sixty-day stay unless this Court is furnished with proof of the filing of said petition in the United States Supreme Court.*

Yours very truly,

/s/ Mollie Jordan

Clerk

cc: Clerk, Madison Circuit Court
Office of the City Attorney
File